



SMALL BUSINESS ADMINISTRATION

13 CFR Parts 124, 125, and 126

[Docket #s: SBA-2020-0016; SBA-2020-0017; SBA-2020-0018]

List of Rules to be Reviewed Pursuant to the Regulatory Flexibility Act

AGENCY: U.S. Small Business Administration.

ACTION: Regulatory review; request for comments.

SUMMARY: The U.S. Small Business Administration (“SBA” or “Agency”) is publishing a list of rules to be reviewed pursuant to section 610 of the Regulatory Flexibility Act. SBA is seeking public comment on whether the rules should be continued without change, amended or rescinded to minimize any significant economic impact of the rules upon a substantial number of small entities.

DATES: Comments should be submitted by [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the methods listed below. In your comment, please use the following reference(s): for comments related to part 124, reference docket number SBA-2020-0016; for comments related to part 125, reference docket number SBA-2020-0017; for comments related to part 126, reference docket number SBA-2020-0018.

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail/Hand Delivery: Brenda Fernandez, U.S. Small Business Administration, 409 Third Street SW, 2nd Floor, Washington, DC 20416.

All comments will be posted on <https://www.regulations.gov>. If you wish to submit Confidential Business Information (CBI) as defined in the User Notice at <https://www.regulations.gov>, you must submit such information either by mail to Brenda Fernandez, U.S. Small Business Administration, 409 Third Street SW, 2nd Floor, Washington, DC 20416, or by email to Brenda Fernandez. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

FOR FURTHER INFORMATION CONTACT: Brenda Fernandez, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street SW, Washington, DC 20416; (202) 205-7337; brenda.fernandez@sba.gov.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act of 1980 (“RFA”), codified at 5 U.S.C. 601-612, requires agencies to consider the impact of regulatory actions on small entities when developing rules. When an agency issues a proposed rule, the agency must “prepare and make available for public comment an initial regulatory flexibility analysis” to “describe the impact of the proposed rule on small entities.”¹ For the rules listed in this document, SBA’s initial regulatory flexibility analysis indicated that the rule could have a significant impact on a substantial number of small entities. During the development of each final rule, SBA considered the public’s comments in analyzing and determining how to mitigate small entity impact to the extent possible while still fulfilling SBA’s statutory mandates. In each final rule, SBA again found that the rulemaking may have a significant economic impact on a substantial

¹ Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

number of small entities within the meaning of the RFA and therefore included a final regulatory flexibility analysis in the rule.

Under the RFA, agencies must review rules that may have a significant economic impact upon a substantial number of small entities within ten years of the publication of such rules as final rules. 5 U.S.C. 610(a). The purpose of the review is “to determine whether such rules should be continued without change or should be amended or rescinded . . . to minimize any significant economic impact of the rules upon a substantial number of such small entities.” 5 U.S.C. 610(a). The RFA sets forth specific considerations that must be addressed in the review of each rule:

- The continued need for the rule;
- The nature of complaints or comments received concerning the rule from the public;
- The complexity of the rule;
- The extent to which the rule overlaps, duplicates or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules; and
- The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. 5 U.S.C. 610(c).

SBA has identified the rules listed below for review pursuant to section 610 of the RFA. The description for each of these rules is organized by CFR Part and includes links to the rules associated with that Part. In addition to the factors listed above, SBA particularly solicits public comment on whether these rules affect small businesses in new or different ways than when they were first adopted.

A. Rules Amending 13 CFR Part 124

Title: 8(a) Business Development (Section 610 Review)

Docket Number: SBA-2020-0016

RIN: 3245-AH19

Citation: 13 CFR 124

Authority: 15 U.S.C 637

Description: Under part 124, 8(a) Business Development/Small Disadvantaged Business Status Determinations, SBA has promulgated several rules that the Agency found would have a significant economic impact on a substantial number of small entities within the meaning of the RFA. These rules established eligibility requirements for participation in the 8(a) programs and application, certification, and protest procedures, among other things. Each of these rules is listed below; for ease of access, SBA has provided the web address for the proposed and final publications of each rule.

(1) Rule: Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

Proposed Rule:); [https://www.govinfo.gov/content/pkg/FR-1997-08-14/pdf/FR-](https://www.govinfo.gov/content/pkg/FR-1997-08-14/pdf/FR-1997-08-14.pdf#page=138)

[1997-08-14.pdf#page=138](https://www.govinfo.gov/content/pkg/FR-1997-08-14/pdf/FR-1997-08-14.pdf#page=138) (62 FR 43584, August 14, 1997).

Final Rule:); [https://www.govinfo.gov/content/pkg/FR-1998-06-30/pdf/98-](https://www.govinfo.gov/content/pkg/FR-1998-06-30/pdf/98-17196.pdf#page=1)

[17196.pdf#page=1](https://www.govinfo.gov/content/pkg/FR-1998-06-30/pdf/98-17196.pdf#page=1) (63 FR 35726, June 30, 1998).

(2) Rule: Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations

Proposed Rule:); <https://www.govinfo.gov/content/pkg/FR-2009-10-28/pdf/E9-25416.pdf#page=1> (74 FR 55694, October 28, 2009).

Final Rule: ; <https://www.govinfo.gov/content/pkg/FR-2011-02-11/pdf/2011-2581.pdf#page=1> (76 FR 8222, February 11, 2011).

(3) Rule: Small Business, Small Disadvantaged Business, HUBZone, and Service-Disabled Veteran-Owned Business Status Protest and Appeal Regulations

Proposed Rule: <https://www.govinfo.gov/content/pkg/FR-2010-03-01/pdf/FR-2010-03-01.pdf#page=52> (75 FR 9129, March 1, 2010).

Final Rule: <https://www.govinfo.gov/content/pkg/FR-2011-02-02/pdf/FR-2011-02-02.pdf#page=9> (76 FR 5680, February 2, 2011).

(4) Rule: Small Business Size and Status Integrity

Proposed Rule: <https://www.govinfo.gov/content/pkg/FR-2011-10-07/pdf/FR-2011-10-07.pdf#page=41> (76 FR 62313, October 7, 2011).

Final Rule: <https://www.govinfo.gov/content/pkg/FR-2013-06-28/pdf/FR-2013-06-28.pdf#page=9> (78 FR 38811, June 28, 2013).

(5) Rule: Acquisition Process: Task and Delivery Order Contracts, Bundling, Consolidation

Proposed Rule: <https://www.govinfo.gov/content/pkg/FR-2012-05-16/pdf/FR-2012-05-16.pdf#page=378> (77 FR 29130, May 16, 2012).

Final Rule: <https://www.govinfo.gov/content/pkg/FR-2013-10-02/pdf/FR-2013-10-02.pdf#page=469> (78 FR 61114, (October 2, 2013).

(6) Rule: Small Business Mentor Protégé Programs; Small Business Size Regulations; Government Contracting Programs; 8(a) Business Development/ Small Disadvantaged

Business Status Determinations; HUBZone Program; Women-Owned Small Business Federal Contract Program; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals.

Proposed Rule: <https://www.govinfo.gov/content/pkg/FR-2015-02-05/pdf/FR-2015-02-05.pdf#page=196> (80 FR 6618, February 5, 2015).

Final Rule: <https://www.govinfo.gov/content/pkg/FR-2016-07-25/pdf/FR-2016-07-25.pdf#page=248> (81 FR 48558, July 25, 2016).

B. Rules Impacting 13 CFR Part 125

Title: Government Contracting Programs (Section 610 Review)

Docket Number: SBA-2020-0017

RIN: 3245-AH20

Citation: 13 CFR 125

Authority: 15 U.S.C. 634, 637 and 644

Description: Under part 125, Government Contracting Programs, SBA has promulgated several rules that the Agency determined would have a significant economic impact on a substantial number of small entities within the meaning of the RFA. These rules established requirements for participation in SBA's government contracting programs, contracting provisions, and protest procedures, among other things. Each of these rules is listed below; for ease of access, SBA has provided the web address for the proposed and final publications of each rule.

(1) Rule: HUBZone Empowerment Contracting Program

Proposed Rule: <https://www.govinfo.gov/content/pkg/FR-1998-04-02/pdf/FR-1998-04-02.pdf#page=72> (63 FR 16148, April 2, 1998).

Final Rule: <https://www.govinfo.gov/content/pkg/FR-1998-06-11/pdf/98-15581.pdf#page=1> (63 FR 31896, June 11, 1998).

(2) Rule: Small Business Size Regulations and Government Contracting Assistance Regulations; Very Small Business Concern

Proposed Rule: <https://www.govinfo.gov/content/pkg/FR-1997-01-21/pdf/FR-1997-01-21.pdf#page=96> (62 FR 2979, January 21, 1997).

Final Rule: <https://www.govinfo.gov/content/pkg/FR-1998-09-02/pdf/FR-1998-09-02.pdf#page=19> (63 FR 46640, September 2, 1998).

(3) Rule: Government Contracting Programs

Proposed Rule: <https://www.govinfo.gov/content/pkg/FR-1999-01-13/pdf/99-560.pdf> (64 FR 2153, January 13, 1999).

Interim Final Rule: <https://www.govinfo.gov/content/pkg/FR-1999-10-25/pdf/FR-1999-10-25.pdf#page=13> (64 FR 57366, October 25, 1999).

Final Rule: <https://www.govinfo.gov/content/pkg/FR-2000-07-26/pdf/FR-2000-07-26.pdf#page=9> (65 FR 45831, July 26, 2000).

(4) Rule: Small Business Government Contracting Programs

Proposed Rule: ; <https://www.govinfo.gov/content/pkg/FR-2003-01-31/pdf/03-2158.pdf#page=2> (68 FR 5134, January 31, 2003).

Final Rule: ; <https://www.govinfo.gov/content/pkg/FR-2003-10-20/pdf/FR-2003-10-20.pdf#page=156> (68 FR 60006, October 20, 2003).

(5) Rule: Small Business Size Regulations; Government Contracting Programs; HUBZone Program

Proposed Rule: <https://www.govinfo.gov/content/pkg/FR-2002-01-28/pdf/FR-2002-01-28.pdf#page=38> (67 FR 3826, January 28, 2002).

Final Rule: <https://www.govinfo.gov/content/pkg/FR-2004-05-24/pdf/FR-2004-05-24.pdf#page=8> (69 FR 29411, May 24, 2004).

(6) Rule: Women-Owned Small Business Federal Contract Program

*Proposed Rule*²: <https://www.govinfo.gov/content/pkg/FR-2010-03-04/pdf/FR-2010-03-04.pdf#page=285> (75 FR 10030, March 4, 2010).

Final Rule: <https://www.govinfo.gov/content/pkg/FR-2010-10-07/pdf/FR-2010-10-07.pdf#page=289> (75 FR 62258, October 7, 2010).

(7) Rule: Small Business, Small Disadvantaged Business, HUBZone, and Service-Disabled Veteran-Owned Business Status Protest and Appeal Regulations

Proposed Rule: <https://www.govinfo.gov/content/pkg/FR-2010-03-01/pdf/FR-2010-03-01.pdf#page=52> (75 FR 9129, March 1, 2010).

Final Rule: <https://www.govinfo.gov/content/pkg/FR-2011-02-02/pdf/FR-2011-02-02.pdf#page=9> (76 FR 5680, February 2, 2011).

(8) Rule: Small Business Size and Status Integrity

Proposed Rule: <https://www.govinfo.gov/content/pkg/FR-2011-10-07/pdf/FR-2011-10-07.pdf#page=41> (76 FR 62313, October 7, 2011).

Final Rule: <https://www.govinfo.gov/content/pkg/FR-2013-06-28/pdf/FR-2013-06-28.pdf#page=9> (78 FR 38811, June 28, 2013).

(9) Rule: Small Business Subcontracting

² This Proposed Rule included a withdrawal of SBA Final Rule, Women-Owned Small Business Federal Contract Assistance Procedures (October 1, 2008; 73 FR 56940). SBA published a final regulatory flexibility analysis with the Final Rule and determined that the rulemaking may have a significant impact on a substantial number of small entities. As the rule was later withdrawn, SBA has not included it in its section 610 review.

Proposed Rule: <https://www.govinfo.gov/content/pkg/FR-2011-10-05/pdf/FR-2011-10-05.pdf#page=79> (76 FR 61626, October 5, 2011).

Final Rule: <https://www.govinfo.gov/content/pkg/FR-2013-07-16/pdf/FR-2013-07-16.pdf#page=10> (78 FR 42391, July 16, 2013).

(10) Rule: Acquisition Process: Task and Delivery Order Contracts, Bundling, Consolidation

Proposed Rule: <https://www.govinfo.gov/content/pkg/FR-2012-05-16/pdf/FR-2012-05-16.pdf#page=378> (77 FR 29130, May 16, 2012).

Final Rule: <https://www.govinfo.gov/content/pkg/FR-2013-10-02/pdf/FR-2013-10-02.pdf#page=469> (78 FR 61114, October 2, 2013).

(11) Rule: Small Business Mentor Protégé Programs; Small Business Size Regulations; Government Contracting Programs; 8(a) Business Development/ Small Disadvantaged Business Status Determinations; HUBZone Program; Women-Owned Small Business Federal Contract Program; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals (February 5, 2015; 80 FR 6618

Proposed Rule: ; <https://www.govinfo.gov/content/pkg/FR-2015-02-05/pdf/FR-2015-02-05.pdf#page=196> (80 FR 6618, February 5, 2015).

Final Rule: Small Business Mentor Protégé Programs (July 25, 2016; 81 FR 48558); <https://www.govinfo.gov/content/pkg/FR-2016-07-25/pdf/FR-2016-07-25.pdf#page=248>

C. Rules Related to 13 CFR Part 126

Title: HUBZone Program (Section 610 Review)

Docket Number: SBA-2020-0018

RIN: 3245-AH21

Citation: 13 CFR 126

Authority: 15 U.S.C. 632 and 657a

Description: Under part 126, HUBZone program, SBA has promulgated several rules that the Agency determined would have a significant economic impact on a substantial number of small entities within the meaning of the RFA. These rules established eligibility requirements for qualified HUBZone small business concerns, procedures for certification program examinations and protests, and provisions relating to HUBZone contracts, among other things. Each of these rules is listed below; for ease of access, SBA has provided the web address for the proposed and final publications of each rule.

(1) Rule: HUBZone Empowerment Contracting Program

Proposed Rule: HUBZone Empowerment Contracting Program (April 2, 1998; 63 FR 16148); <https://www.govinfo.gov/content/pkg/FR-1998-04-02/pdf/FR-1998-04-02.pdf#page=72>

Final Rule: HUBZone Empowerment Contracting Program (June 11, 1998; 63 FR 31896); <https://www.govinfo.gov/content/pkg/FR-1998-06-11/pdf/98-15581.pdf#page=1>

(2) Rule: Small Business Size Regulations; Government Contracting Programs;
HUBZone Program

Proposed Rule: <https://www.govinfo.gov/content/pkg/FR-2002-01-28/pdf/FR-2002-01-28.pdf#page=38> (67 FR 3826, January 28, 2002).

Final Rule: Small Business Size Regulations; Government Contracting Programs; HUBZone Program <https://www.govinfo.gov/content/pkg/FR-2004-05-24/pdf/FR-2004-05-24.pdf#page=8> (69 FR 29411, May 24, 2004).

(3) Rule: Women-Owned Small Business Federal Contract Program

Proposed Rule: <https://www.govinfo.gov/content/pkg/FR-2010-03-04/pdf/FR-2010-03-04.pdf#page=285> (75 FR 10030, March 4, 2010).

Final Rule: <https://www.govinfo.gov/content/pkg/FR-2010-10-07/pdf/FR-2010-10-07.pdf#page=289> (75 FR 62258, October 7, 2010).

(4) Rule: Small Business, Small Disadvantaged Business, HUBZone, and Service-Disabled Veteran-Owned Business Status Protest and Appeal Regulations

Proposed Rule: <https://www.govinfo.gov/content/pkg/FR-2010-03-01/pdf/FR-2010-03-01.pdf#page=52> (75 FR 9129, March 1, 2010).

Final Rule: <https://www.govinfo.gov/content/pkg/FR-2011-02-02/pdf/FR-2011-02-02.pdf#page=9> (76 FR 5680, February 2, 2011).

(5) Rule: Small Business Size and Status Integrity

Proposed Rule: <https://www.govinfo.gov/content/pkg/FR-2011-10-07/pdf/FR-2011-10-07.pdf#page=41> (76 FR 62313, October 7, 2011).

Final Rule: <https://www.govinfo.gov/content/pkg/FR-2013-06-28/pdf/FR-2013-06-28.pdf#page=9> (78 FR 38811, June 28, 2013).

(6) Rule: Acquisition Process: Task and Delivery Order Contracts, Bundling, Consolidation

Proposed Rule: <https://www.govinfo.gov/content/pkg/FR-2012-05-16/pdf/FR-2012-05-16.pdf#page=378> (77 FR 29130, May 16, 2012).

Final Rule: <https://www.govinfo.gov/content/pkg/FR-2013-10-02/pdf/FR-2013-10-02.pdf#page=469> (78 FR 61114, October 2, 2013).

(7) Rule: Small Business Mentor Protégé Programs; Small Business Size Regulations; Government Contracting Programs; 8(a) Business Development/ Small Disadvantaged Business Status Determinations; HUBZone Program; Women-Owned Small Business Federal Contract Program; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

Proposed Rule: (<https://www.govinfo.gov/content/pkg/FR-2015-02-05/pdf/FR-2015-02-05.pdf#page=196> (80 FR 6618, February 5, 2015).

Final Rule: <https://www.govinfo.gov/content/pkg/FR-2016-07-25/pdf/FR-2016-07-25.pdf#page=248> (81 FR 48558, July 25, 2016).

Dated: April 16, 2020

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